

REMARKS

I. Status of the Claims.

Claims 2-36 are pending in the present application. This Response and Amendment amends Claims 2, 9-24, and 26-34, and adds new claims 35-40.

II. Claim Amendments And New Claims.

Claims 2, 9-24, and 26-34 have been amended to correct dependencies, typographical errors, and for clarity. Claim 27 has been amended to claim the method and amounts of daily dosages stated in the Specification, pages 4-7, and original claim 19. Support for new Claims 35-40 is found in the Specification. These amendments do not add new matter. Entry of the amended and new claims is respectfully requested.

III. The Rejection Under 35 USC § 103.

The Examiner has rejected the pending claims under 35 U.S.C. as being unpatentable over Chinery (US Pat. App. Pub. 2004/0077556); in view of Lawn et al. (US Pat. 6,821,774), Brink (US Pat. 6,113,949) and Allen (US Pat. 5,480,657) for the reasons stated on pages 2-4 of the Office Action dated January 30, 2007.

The Applicant respectfully traverses this basis for rejection and requests reconsideration based on the following remarks.

1. Vinca Alkaloids and Forskolin are not known as compounds used in a method for weight control.

All of the pending claims are limited to one or both of a Vinca Alkaloid and Forskolin. Applicants request withdrawal of the rejection on the basis that Vinca Alkaloids and Forskolin are not known as compounds useful for weight control in a mammal, and there is no art recognized suitability of these compounds for weight control in a mammal. See, MPEP, §§ 2144.06-2144.07.

The Examiner cites Lawn et al. as disclosing a method for increasing cholesterol efflux from cells of a mammal by administering forskolin which increases synthesis of cAMP and vinpocetine which inhibits the degradation of cAMP, and then hypothesizes that since other compounds are known to increase cAMP and are known to control weight, that combining these other compounds with forskolin and vinpocetine would be effective in controlling weight.

The Applicant respectfully does not agree with this assertion. Vinpocetine and Forskolin are disclosed in Lawn as compounds useful in a method for increasing cholesterol efflux from cells by administering a therapeutic amount of a compound that increases the expression of ABC1 in cells (Lawn, col. 9, lines 1-5). Suitable methods for increasing the expression of ABC1 in cells is “administering to the mammalian subject a compound that increases the synthesis of cAMP e.g., forskolin, and “administering to the mammalian subject a compound that inhibits the degradation of cAMP, such as a phosphodiesterase inhibitor.” The Examiner has not established as a scientific fact, or by the knowledge of those with skill in the art that was known that (i) increasing the expression of ABC1 in cells, (ii) increasing the synthesis of cAMP, or (iii) inhibiting the degradation of cAMP was useful in a method for controlling weight.

Further, as is known to those of skill in the art, cyclic AMP (cAMP), is a molecule that is important in many biological processes. The Examiner has not presented facts that support the conclusion that all compounds that increases the synthesis of cAMP, or inhibits the degradation of cAMP are useful in a method for controlling weight and this is not a reasonable inference. Merely because the claimed compounds are disclosed as either inhibiting the degradation of cAMP or increasing the synthesis of cAMP does not establish a well-known or art recognized suitability of vinpocetine and forskolin for a method of weight control. Further, the specification discloses that Forskolin appears to increase the levels of cyclic AMP or exert action similar to cAMP in the body, and so to enhance the thermogenic response to food. This is not established by Lawn et al., and imputing this knowledge to Lawn et al. is impermissible hindsight.

Applicant has detailed above the reasoning for why the Examiner’s reasoning in support of the combination is in error. Applicant requests that the Examiner produce prior art authority for the statements that inhibiting the degradation of cAMP and increasing the synthesis of cAMP is effective for weight control, or withdraw the rejection.

2. Chinery does not Establish the art recognized suitability of Forskolin in the absence of an Adrenergic Amine.

The Examiner cites to Chinery in support of the proposition that combining an alpha-1 agonist with forskolin helps to increase thyroid production which is useful in

increasing weight loss. Lawn, par. 0093, states “stimulating both alpha-1 adrenergic receptors and beta adrenergic receptors with a beta agonist such as . . . forskolin helps to increase thyroid production. However, Claims 39 and 40 do not require an adrenergic amine. Compositions having the combination of compounds claimed in claims 39 and 40 have been found to be effective in weight control. Under United States Patent Law, omission of an element with retention of the element’s function is an indicia of unobviousness (MPEP 2144.04). Accordingly, applicant requests withdrawal of the rejection of Claims 39 and 40 on this basis.

CONCLUSION

Applicants believe that all pending claims are in condition for allowance and a Notice of Allowance of all claims is respectfully requested. If, however, there remain any issues which can be addressed by telephone, the Examiner is encouraged to contact the undersigned at the telephone number listed below.

Please charge any fees due in connection with this Amendment or credit any overpayment to Deposit Account No. 19-2090.

Respectfully submitted,

SHELDON MAK ROSE & ANDERSON

Date: July 27, 2007

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